

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOHN DOE,

Plaintiff,

v.

**ELWOOD PUBLIC SCHOOL DISTRICT, a
Nebraska political subdivision, and
DAVID BLESSING, individually and in his
official capacity,**

Defendants.

7:04CV5011

ORDER

This matter is before the court on plaintiff's MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT [234], the defendants' OBJECTION thereto [239], and plaintiff's MOTION for a scheduling conference [241].

Plaintiff wishes to amend his fourth and fifth causes of action to allege liability on the part of Elwood Public School District ("EPSD") for violations of 42 U.S.C. § 1983 and for breach of fiduciary duty. The remaining defendants, EPSD and David Blessing, object to the proposed amendment on grounds of timeliness.

I note that the proposed Third Amended Complaint is replete with allegations of liability against EPSD's insurer, AMCO Insurance Company ("AMCO"). All of plaintiff's claims against AMCO were dismissed with prejudice by Judge Smith Camp on August 5, 2005, nearly a year before the present motion was filed. In light of Judge Smith Camp's dismissal with prejudice of all claims against AMCO, *see* Filing 168, I will not authorize the filing of the Third Amended Complaint now proposed.

On December 18, 2006, however, the court entered an order [240] requiring the defendants to provide certain discovery by January 16, 2007. Under the circumstances, I find that a telephonic conference should be held for purposes of scheduling this matter to trial. The matter of filing motions to amend pleadings will be discussed and determined at that time. The parties may not file any motions for leave to amend the pleadings until after the scheduling conference is held.

IT IS ORDERED:

1. Plaintiff's MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT [234] is denied.
2. Defendants' OBJECTION [239] is sustained.
3. Plaintiff's MOTION for a telephonic scheduling conference [241] is granted, as follows:
 - a. A telephonic conference will be held on **Monday, February 5, 2007 at 10:00 a.m.**, Central Standard Time, for purposes of scheduling this matter to trial. The court will initiate the conference call.
 - b. The matter of filing motions to amend pleadings will be discussed and determined at the time of the February 5, 2007 scheduling conference. The parties may not file any motions for leave to amend the pleadings until after the scheduling conference is held.
 - c. Counsel for AMCO Insurance Company shall advise the court no later than the close of business on **January 30, 2007**, if they wish to participate in the February 5, 2007 scheduling conference.

DATED December 28, 2006.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**